

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1496**

In re the Marriage of:

Marilena Elizabeth Hyman, petitioner,
Respondent,

vs.

Sean Michael Hyman,
Appellant.

**Filed October 30, 2023
Affirmed; motion denied
Bjorkman, Judge**

Hennepin County District Court
File No. 27-FA-21-856

Tifanne E. E. Wolter, Henningson & Snoxell, Ltd., Maple Grove, Minnesota (for respondent)

Sean Hyman, St. Louis Park, Minnesota (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

In this parenting-time dispute, appellant-father argues that the district court abused its discretion by denying his motions to (1) vacate and amend portions of the stipulated marital dissolution judgment and decree based on fraud by respondent-mother, and (2) award him conduct-based attorney fees. We affirm.

FACTS

Appellant Sean Michael Hyman (father) and respondent Marilena Elizabeth Hyman (mother) married in 2014 and have two minor children, born in 2013 and 2016. In February 2021, mother petitioned for dissolution of the marriage. At that time, she worked as a high school paraprofessional during the school year and held two other part-time jobs. Father is a former police officer who was injured in the line of duty and is unable to work.

In November 2021, the parties resolved the disputes between them during a moderated settlement conference. At the time of the conference, mother had applied and interviewed for a new full-time job. A few days later, mother accepted the new job; she signed the parties stipulation that same day. Father subsequently signed that stipulation, and the district court later signed and entered judgment on it. Shortly thereafter, mother began her new job. She advised father of her new position, and the two agreed to modify child support to reflect mother's increased income.

Father moved the district court to vacate and amend the dissolution judgment pursuant to Minn. Stat. § 518.145, subd. 2(3) (2022). He argued that (1) mother committed fraud by failing to disclose her job interview prior to the settlement conference and by

accepting the job offer prior to signing the stipulation, and (2) the nondisclosures implicate the agreed-to allocation of parenting time. Father also requested conduct-based attorney fees based on the additional court proceedings occasioned by mother's nondisclosures.

The district court denied husband's motions, reasoning that mother's conduct did not amount to fraud and declining "to award attorney's fees on the basis of either party's unreasonable contribution to the length or expense of the proceeding."

Father appeals.¹

DECISION

I. The district court did not abuse its discretion by denying husband's motion to vacate and amend the stipulated dissolution judgment based on fraud.

A district court may relieve a party to a dissolution proceeding "from a judgment and decree, order, or proceeding" for "fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party." Minn. Stat. § 518.145, subd. 2(3). To obtain relief under this statute, a party must make a showing of ordinary fraud. *Doering v. Doering*, 629 N.W.2d 124, 129-30 (Minn. App. 2001), *rev. denied* (Minn. Sept. 11, 2001). To prevail on a claim of fraud in a typical civil case, a party must prove, among other things, that "there was a false representation by a party of a past or existing material fact," which was intended to and did induce another party to rely on it to

¹ Husband moved this court to supplement the record to include documents the parties filed in district court after the challenged order was entered. Because the documents were not presented to the district court in connection with the appealed order, we deny husband's motion. *See Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) ("An appellate court may not base its decision on matters outside the record on appeal."); Minn. R. Civ. App. P. 110.01 (limiting the record on appeal to matter that was before the district court).

their detriment. *Driscoll v. Standard Hardware, Inc.*, 785 N.W.2d 805, 811 (Minn. App. 2010), *rev. denied* (Minn. Sept. 29, 2010). But “[o]rdinary fraud, in a dissolution context, does not require an affirmative misrepresentation or an intentional course of concealment because parties to a marriage dissolution have a duty to disclose all assets and liabilities completely and accurately.” *Doering*, 629 N.W.2d at 130 (citing *Bollenbach v. Bollenbach*, 175 N.W.2d 148, 155 (Minn. 1970)). We review a district court’s decision whether to reopen a dissolution judgment for an abuse of discretion. *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022).

In dissolution cases involving children, the parties must disclose their full gross income, which “includes any form of periodic payment to an individual, including, but not limited to, salaries, wages, [and] commissions.” Minn. Stat. § 518A.29(a) (2022); *see Doering*, 629 N.W.2d at 130. Failure to make an accurate and complete disclosure is ordinary fraud sufficient to reopen a dissolution judgment that was based on the incomplete disclosure. *Doering*, 629 N.W.2d at 130.

Father asserts that mother was obligated to disclose her new employment before the district court entered the dissolution judgment and that her failure to do so constitutes ordinary fraud. While the parties resolved the financial aspects of mother’s job change, father contends that her undisclosed new year-round work schedule impacts and requires modification of the parenting-time schedule. We are not persuaded for two reasons.

First, mother did not violate her disclosure obligations. She was still employed as a paraprofessional and held two other part-time jobs when the parties entered their settlement and when she signed the stipulated judgment. Mother fully and accurately

disclosed the gross monthly income she was then receiving from those jobs. The affirmative duty to disclose all relevant financial information, including current earnings, extends until the marriage is dissolved. *Ronnkvist v. Ronnkvist*, 331 N.W.2d 764, 766 (Minn. 1983). Mother complied with this duty. She did not receive income from her new job until after the dissolution decree was entered. And she updated father and the court when her gross monthly income changed. While mother could have been more forthcoming during the settlement conference, the law expressly contemplates what happened here—modification of child support after a parent begins and receives payment from a new job. *See* Minn. Stat. § 518A.39, subd. 2(a) (2022) (setting out bases for modifying child support).

Second, the identity of mother’s employer and mother’s work schedule are not material to the issue of parenting time. As the district court correctly noted, there is no language in the stipulated judgment indicating that the 50/50 parenting-time agreement turned on any specific detail of mother’s employment. A person commits fraud when they make a false representation as to a *material* fact. *Driscoll*, 785 N.W.2d at 811. Because mother’s work schedule is not material to the parenting-time agreement, any failure to disclose her then potential new work schedule is not fraud.

In sum, on this record we discern no abuse of discretion by the district court in concluding mother did not commit ordinary fraud and declining to disturb the stipulated judgment.

II. The district court did not abuse its discretion by denying conduct-based attorney fees.

District courts have discretion to award attorney fees “against a party who unreasonably contributes to the length or expense of the proceeding.” Minn. Stat. § 518.14, subd. 1 (2022). When a party seeks attorney fees in excess of \$1,000, they must submit their request by motion. Minn. R. Gen. Prac. 119.01. This motion must be accompanied by an affidavit of an attorney of record establishing a description of the work completed, the normal hourly rate, a detailed itemization of all expenses, and a statement that the affiant has reviewed the work and that it was actually performed for the client. Minn. R. Gen. Prac. 119.02. And the moving party should submit a memorandum of law discussing the basis for recovery of attorney fees. Minn. R. Gen. Prac. 119.04. A party seeking conduct-based attorney fees has the burden of showing that the conduct in question unreasonably contributed to the length or expense of the proceeding. *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001). We review the denial of conduct-based attorney fees for an abuse of discretion. *Sanvik v. Sanvik*, 850 N.W.2d 732, 737 (Minn. App. 2014).

Our careful review of the record reveals no abuse of discretion by the district court. Father did not provide the district court with a memorandum of law stating a basis for relief, which itself supports the district court’s decision. And the record supports the district court’s implicit assessment that the behavior of both parties contributed to the post-judgment proceedings.

Affirmed; motion denied.